

Minutes of the Kansas Sentencing Commission Meeting September 30, 2004

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting to order on September 30, 2004, at 1:40 p.m. The meeting was held in the Senate Room of the Jayhawk Tower Building, Topeka, Kansas.

Attendance

Members: Honorable Ernest L. Johnson, Chairman; Paul Morrison, District Attorney, Vice Chairman; Honorable Christel Marquardt; Honorable Eric Rosen; Senator Greta Goodwin; Senator John Vratil; Representative Janice Pauls; Representative Jeff Goering; Roger Werholtz, Secretary, Department of Corrections; Chris Mechler, Office of Judicial Administration; Rick Kittel, Board of Indigents' Defense Services; Kevin Graham, designee, Office of Attorney General; Robert Sanders, designee, Kansas Parole Board; Dr. Donald Jackson, Public Member; Jaime Richardson, Public Member; Kathleen Lynch, Private Defense Attorney. Staff: Patricia Biggs, Executive Director; Julia Butler, Staff Attorney; Kunlun Chang, Research Director; Fengfang Lu, Research Analyst; Lora Moison, Research Analyst; Heidi Zimmerman, Research Analyst; Brenda Harmon, Administrative Assistant; Janice Brasher, Grant Administrator; Marty Schmiedeler, Accountant. Guests: Lana Walsh, Office of Judicial Administration; Roger Haden, Kansas Department of Corrections; Vivien Olsen, Juvenile Justice Authority.

Approval of the Minutes

The Chairman referred to the minutes of the August 26, 2004, Kansas Sentencing Commission meeting. An addition of Jaime Richardson and Kevin Graham as attendees at the August 26th meeting was noted and will be corrected. A motion was made by Senator Greta Goodwin, and seconded by Chris Mechler, to approve the minutes of the August 26, 2004, Kansas Sentencing Commission meeting as corrected. The motion carried.

Blakely v. Washington – Denver conference update

Mr. Paul Morrison provided an update on the Blakely v. Washington conference recently held in Denver. The Federal system has a bill in congress now, which has not yet been introduced, that would make every sentence presumptive toward the top end. This would then allow the judges to depart down if they feel that is appropriate. There is a pool of thought that the United States Supreme court will not take this very well. About 12 states that are directly affected by Blakely are still in the discussion stages and struggling with options as to how to correct this problem.

2004 Guidelines Desk Reference Manuals

Ms. Patricia Biggs announced the 2004 Desk Reference Manuals have been received. About 2,200 have been printed, and distribution is in progress. They were printed this year by the Hutchinson Print Shop, which cut the cost by about one-third.

Prison Population Subcommittee Report

Mr. Paul Morrison provided an overview of the recent meeting of the Prison Population Subcommittee. Preliminary discussions included the following possibilities to free up bed space:

- Options for inmates close to release
- Expand boxes for the “H” and “I” grid box categories
- Sentence length changes
- Drug Grid – there may still be some leeway to reduce sentences by way of treatment

Senate Bill 123 Subcommittee Report

Chairman Johnson has not yet convened the SB 123 Subcommittee. He has, however, received a great deal of feedback statewide. Some of the technical clean-up items include the following:

- Bill tightened up so the primary offense would be the drug possession conviction
- Bill amended to specifically include the “attempted/conspiracy/solicitation” possessor
- Exclusionary convictions to include not only the outright conviction for the listed offenses, but an “attempt/conspiracy/solicitation” to commit that excluded offense
- Plea bargaining
- Ask Legislature to confer on the court the power to depart for an out of state defendant
- Reconsider retroactivity

Senate Bill 123 Community Corrections Subcommittee Recommendations

Ms. Biggs discussed the proposal made by the SB 123 Community Corrections subcommittee that met on offender reimbursement. A copy of the proposal was provided to Commission members.

Timeline of Selected Events – Senate Bill 123 Implementation

A draft of a SB 123 Implementation Timeline of Selected Events was provided for Commission members. Ms. Biggs reviewed the timeline, a copy of which will be included in the update discussion that will go before the Joint Committee next week. She highlighted the immense amount of training that treatment providers had to engage in to obtain certification; and the very short time between when the treatment providers had to have their plans to DOC to become certified, and when the implementation of SB 123 occurred November 1st.

Proportionality Study – update from VERA

VERA has not yet submitted a full report in draft form to the Commission. It should be completed within the next two weeks. Ms. Biggs has discussed the possibility with VERA that they come out to make a presentation to the Sentencing Commission, the 3-R Committee and to the Joint Committee. Part of the contracted price does include VERA making a presentation on their results of the Proportionality Study. An addition that was asked for, Kansas Drug Offenses compared to other states, is being included in the report as well.

Senate Bill 45 3-R Committee Update

Mr. Kevin Graham summarized meetings held September 14-15th by the SB 45 Kansas Criminal Recodification, Rehabilitation and Restoration Project Committee, of which he is the vice chair. Topics discussed included:

- Mental Health Issues
- Recodification
- Rehabilitation Programs
- Consolidation of Field Services
- Prison Population Issues

Fiscal Year 2005 Prison Population Custody Projections

Ms. Biggs discussed the FY 2005 Ten-Year Custody Classification Projections. The projections are based on the custody classification system as it presently exists and as it was executed last year. Mr. Roger Werholtz made mention of the fact that a consultant is looking at reviewing the custody classification system, which may make this data invalid, depending on what those results come back as. A simulation will not be possible until this system is up and running for about a year, because length of stay at various custody levels, a critical item needed for model construction, will not be available until that time. A copy of the Custody Classification Projections was provided to Commission members. A motion was made by Mr. Kevin Graham, and seconded by the Honorable Christel Marquardt, to approve the Custody Classification Projections for FY 2005. The motion carried.

Administrative

Parking Hangtags

Ms. Biggs asked Commission members to let Brenda Harmon know if they would desire to have a parking hangtag for use while attending Commission meetings.

Research Request Fulfillment

Since the last Commission meeting, several checks have been received by the Sentencing Commission for payment on invoices following data requests, and for extra copies of the 2004 Desk Reference Manual. Checks have also been received for SB 123 offender reimbursements.

Next Meeting

The next Kansas Sentencing Commission meeting was scheduled for Wednesday, November 3rd, 2004, at 1:30 p.m.

Senator John Vratil made a motion to adjourn the Sentencing Commission meeting. Mr. Roger Werholtz seconded the motion. The motion carried, and the meeting was adjourned.